

# **Race to the Top**

## **Summary of Conflict of Interest Policy and Procedure**

### **Overview**

At the U.S. Department of Education (Department), peer reviewers for discretionary grants programs serve as contractors and are not considered Department employees. Therefore, peer reviewers are not subject to the same conflict of interest laws and regulations applicable to Executive branch employees. The Department has a policy and procedures to address peer reviewer conflicts of interest which are outlined in Section 3.5 of the Department's "Handbook for Discretionary Grant Process." ACS Handbook OS-01 (1/26/09). The Handbook provides a framework for identifying and mitigating peer reviewer conflicts of interest, which is the basis for the plan we developed to effectively address peer reviewer conflicts of interest in the Race to the Top competition. These policies and procedures are designed to enable the Department to have expert peer reviewers while, at the same time, ensuring a high level of objectivity and integrity in the review.

The purpose of this document is to describe the process that the Department used to implement this policy and ensure that the Race to the Top competition peer review process is conducted in an objective manner.

### **Identifying Potential Conflicts of Interest**

A multi-step process was used to identify, evaluate and manage peer reviewer conflicts of interest for the Race to the Top competition. First, the Department made an initial determination that no individual who has a "direct conflict of interest," as defined below, who is a current employee of a State educational agency (SEA) or local educational agency (LEA), or who is an employee or board member of a public charter school or a public charter school management organization, would be permitted to serve as a peer reviewer.<sup>1</sup> Additionally, no peer reviewer would be permitted to serve on a panel reviewing the application submitted by the State in which he or she resides. Peer reviewer nominees were asked to complete an initial survey to gather the relevant information to help make this determination.

After eliminating peer reviewer nominees with "direct conflicts of interest," or who were current SEA or LEA employees, program staff reviewed the peer reviewer nominee applications and resumes for qualifications, and to determine if any individual had any non-financial interest that should be considered in evaluating an individual's objectivity and biases. Non-financial interests include, but are not limited to, significant identification with a specific pedagogical or

---

<sup>1</sup> Individuals with these employment relationships were eliminated from consideration because all SEAs are potential applicants, and all LEAs and charters are potential sub-grantees of SEAs; thus all have a direct interest in the outcome of the competition.

philosophical viewpoint that might give an unfair advantage or disadvantage to an applicant proposing to use a specific educational approach or methodology.

The remaining peer reviewer nominees were asked to complete a second survey to determine whether they had an “indirect conflict of interest,” as defined below, or other interests that might affect objectivity. In addition, program staff asked a Department contractor to run a targeted internet search on each of the peer reviewer nominees actively under consideration at this point. These remaining individuals were considered the most highly qualified peer reviewer nominees who were not eliminated through the first round of the conflict of interest check.

Staff of the Ethics Division of the Office of General Counsel reviewed survey responses, resumes, and the results of the internet searches and, in deliberations with the program staff and program attorneys, determined the nature and extent of any “indirect conflicts of interest” or other information that raised questions about a peer reviewer nominee’s objectivity. In many cases, follow-up interviews were conducted to gain additional information in response to questions raised during this review.

As a result of this review some peer reviewer nominees were eliminated from consideration based on the practical fact that the number of applications they would be required to be disqualified from reviewing was too large.<sup>2</sup> In addition to the fact that all peer reviewers would be disqualified from reviewing applications submitted by their State of residence, the remaining peer reviewer nominees fell into one or both of the following categories:

- 1) Individuals with an “indirect conflict of interest.” These individuals were granted a waiver that permitted them to review subject to certain conditions, including disqualification from reviewing State applications giving rise to the “indirect conflict of interest,” or
- 2) Individuals with no “indirect conflict of interest,” but for whom there was other information that required disqualification from reviewing certain State applications in order to avoid the appearance of a loss of impartiality.

### **Direct Conflicts of Interest**

As noted above, no individual who was determined to have a “direct conflict of interest” was permitted to serve as a peer reviewer in the Race to the Top competition. An individual was considered to have a “direct conflict of interest” if:

- 1) The individual’s financial interests were affected by the outcome of the Race to the Top competition;

---

<sup>2</sup> Disqualifications for this purpose mean that in order to mitigate an appearance of a conflict of interest, based on an “indirect conflict of interest” or otherwise, a peer reviewer nominee will not be assigned to serve on a panel that is considering the application from the State(s) giving rise to the appearance issue.

- 2) An individual helped prepare a Race to the Top application, even if he or she has no financial interest in the outcome of that application;
- 3) An individual has agreed to serve as an employee or consultant, or otherwise provide assistance or advice, on any project for which funding is being sought in any Race to the Top application, or has been offered the opportunity to do so, and has not yet accepted or declined.

### **Indirect Conflicts of Interest**

Individuals for whom an “indirect conflict of interest” was identified were not permitted to serve as a peer reviewer unless a waiver was issued.

An individual has an “indirect conflict of interest” if any of the following has a personal financial interest in the outcome of the competition:

- 1) The reviewer’s spouse, his or her child, a member of his or her household, or any relative with whom he or she has a close relationship;
- 2) Any employer the reviewer has served within the last 12 months; a business partner; an organization the reviewer has served as an officer, director, or trustee within the last 12 months; or an organization that he or she serves as an active volunteer;
- 3) Any person or organization with whom the reviewer is negotiating for, or has an arrangement concerning, future employment; or
- 4) Any professional associate – including any colleague, scientific mentor, or student – with whom the reviewer is currently conducting research or other professional activities, or with whom the reviewer has conducted such activities within the last 12 months.

It is the Department’s policy that each identified “indirect conflict of interest” must be considered on a case-by-case basis. A waiver may be issued when a determination is made that an individual’s financial interest is not so substantial as to affect the integrity of his or her services and, given all relevant facts, the Department’s need for the individual reviewer’s services outweighs the possibility that a reasonable person would question the reviewer’s impartiality.

The Department expects to issue waivers for up to 21 peer reviewers for whom an indirect conflict of interest was identified. Individuals who are granted waivers are disqualified from reviewing an application from the State that gives rise to the indirect conflict of interest. Examples of indirect conflicts of interest for the Race to the Top competition include recently retired LEA employees and individuals who currently, or recently (within the last 12 months), worked on projects with an LEA or SEA that are unrelated to Race to the Top.

### **Appearance of a Conflict of Interest – Other Circumstances**

Reviewers were also asked to identify any other circumstance that might cause someone to question his/her ability or objectivity in serving as a reviewer in this competition. First, through the review process described above, the Department identified some circumstances that are not considered either a direct or indirect conflict of interest, but for which peer reviewers were otherwise, out of an abundance of caution, disqualified from reviewing certain applications. For example, peer reviewers will not be assigned to panels reviewing applications from States in the following circumstances:

- 1) The reviewer provided services to an SEA or LEA more than one year ago, but within the last two years, and
- 2) The reviewer's employer has provided services to an SEA or LEA, but the reviewer did not personally provide such services, and the services are unrelated to Race to the Top.

Additionally, the Department anticipates that non-profit organizations, for-profit companies, and other organizations that are not eligible applicants in the Race to the Top competition may nonetheless be mentioned in a State's application. Having conducted a test survey of applications, we believe that most mentions of such entities in States' applications will be incidental. Applicants were specifically discouraged from naming potential contractors for their Race to the Top projects. Nevertheless, peer reviewers have been instructed to advise program staff immediately if they discover that a non-profit, for-profit or other organization with which they have a relationship (such as employment, board membership or stock ownership) is mentioned in any application they are assigned to review so that the identified relationship can be evaluated for conflicts of interest and, where necessary, an appropriate mitigation strategy can be implemented, including but not limited to, reassignment of the subject application.

### **Design of the Competition**

Certain aspects of the competition design for Race to the Top will help mitigate the appearance that any individual peer reviewer may not be impartial. Specifically:

- 1) Applications were randomly assigned to reviewers after the States for which reviewers had waivers or disqualifications were "blacked out."
- 2) Each application will be reviewed by five reviewers.
- 3) There is a detailed scoring rubric that peer reviewers must use to score an application.
- 4) Department staff will serve as panel monitors and ensure there is a full and in-depth discussion of the scores.
- 5) Both before and during the review process, program officials and reviewers are reminded that throughout the course of the review, they must identify any

circumstances that might cause a reasonable person to question a reviewer's impartiality in serving as a reviewer for the Race to the Top competition.

**Peer Reviewers Attest to Conflicts Status**

Each individual who serves as a peer reviewer for the Race to the Top competition is required to review all survey responses and other information they have provided in connection with the conflict of interest procedure, and attest to their conflicts status in a reviewer agreement.